



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: DECEMBER 06, 2022

IN THE MATTER OF:

Appeal Board No. 625461

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 625459, 625460 and 625461, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed August 22, 2022, insofar as it (1) modified the initial determination holding the claimant ineligible to receive benefits, effective June 29, 2020 through August 29, 2021, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation, to be effective July 7, 2021 through August 29, 2021, and sustained the initial determination as modified; (2) modified the initial determination charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$3,900 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$6,142.50 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), and \$900 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), to reflect an overpayment of FPUC and PUA benefits only, in accordance with the decision and referred the amount of the FPUC and PUA overpayments to the Department of Labor for recalculation; and (3) overruled the initial determination reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$1,506.37 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** Beginning in May 2020, the claimant worked as a human resources expert with varying hours for this employer and was paid for his services. He filed an original claim for benefits, effective June 22, 2020. From the period of June 29, 2020 through July 11, 2021, he worked four or more days and earned over \$504 for the weeks ending July 5, July 12, August 23, November 22, November 29, December 6, December 20, December 27, 2020, January 3, May 2, May 9, June 27, July 4 and July 11, 2021. He worked four or more days for the weeks ending August 9 and August 16, 2020, April 18, and April 25, 2021. He worked three days for the weeks ending September 6, 2020 through September 27, 2020; for the weeks ending February 7, 2021 through April 11, 2021, and in the week ending May 23, 2021. He worked two days in the weeks ending October 4 and October 11, 2020; in the weeks ending January 10, 2021 through January 31, 2021; and in the weeks ending May 16, June 13, and June 20, 2021.

When he certified for benefits each week at issue, he was asked whether he had earned more than \$504. Through the week ending January 17, 2021, the claimant was also asked weekly how many days he worked; through the week ending August 15, 2021, he was asked weekly how many hours he worked during a week with instructions for converting hours to days of work in order to report days of work. Beginning on August 16, 2021, he was also asked weekly how many hours he worked during a week with different instructions for converting hours to days of work in order to report days of work. In each of his certifications, the claimant stated he earned less than \$504. He also certified to zero days worked for the weeks ending July 5, September 6, September 27, October 4, November 22, 2020, and from the week ending January 3, 2021 through the week ending August 29, 2021. He certified to one day worked for the weeks ending September 13, September 20, and from the week ending December 6 through the week ending December 27, 2020. He certified to two days worked for the weeks ending August 23, and November 29, 2020. He certified to three days worked for the weeks ending August 9 and August 16, 2020.

The claimant received \$900 in LWA benefits; \$3,900 in FPUC benefits and \$6,142.50 in PUA benefits.

OPINION: The Administrative Law Judge decisions found the claimant was not totally unemployed and/or had earnings over the statutory limitation for the weeks at issue during period from July 7, 2021 through August 29, 2021; and was overpaid PUA and FPUC benefits for this period. There was no appeal from that portion of the decisions. We are bound by those findings in the decisions.

With respect to the period from June 29, 2020 through July 11, 2021, the credible evidence establishes that the claimant worked during this period for various days as found above. The claimant does not dispute that he worked the number of days as contended, including the days for the weeks after January 17, 2021 determined based on converting the hours worked. He also earned over \$504 for the various weeks as found above. Accordingly, we conclude that the claimant was not totally unemployed and/or earned over the statutory limitation.

The credible evidence further establishes that when the claimant certified for benefits, he either reported he worked zero days or underreported the number of days he worked, when he knew that he had worked and was being paid. Each of these statements is factually false. Additionally, his statements that he earned less than \$504 each week for the weeks noted above were also factually false. The certification questions are simple, straightforward questions not requiring specialized knowledge. We disagree with the Judge's conclusion that the initial determination of willful misrepresentation was defective. We note that the dates of the certifications were listed as part of the initial determination of recoverable overpayment on the same page and referenced the section of the initial determination of willful misrepresentation. Therefore, the claimant was on notice of the dates. Accordingly, we further conclude that the claimant's false certifications constitute willful misrepresentations, and that the civil penalty was properly imposed.

As the claimant was ineligible to receive benefits, he was overpaid federal benefits. The federal benefits are recoverable per federal law.

DECISION: In Appeal Board No. 625459, the decision of the Administrative Law Judge, insofar as appealed from, is reversed.

In Appeal Board No. 625459, the initial determination, holding the claimant ineligible to receive benefits, effective June 29, 2020 through August 29, 2021, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation, is sustained.

In Appeal Board No. 625460, the decision of the Administrative Law Judge, insofar as appealed from, is reversed.

In Appeal Board No. 625460, the initial determination, charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$3,900 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$6,142.50 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), and \$900 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), is sustained.

In Appeal Board No. 625461, the decision of the Administrative Law Judge is reversed.

In Appeal Board No. 625461, the initial determination, reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$1,506.37 on the basis that the claimant made willful misrepresentations to obtain benefits, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER